

(b) Ten (10) days prior to the date set for oral argument, each party, including the NRC staff, may submit to the presiding officer a reply limited to addressing whether the written summaries, facts, data, and arguments filed under paragraph (a) of this section support or refute the existence of a genuine and substantial dispute of fact. Each party's reply shall be simultaneously served on all other parties to the proceeding.

(c) Only facts and data in the form of sworn written testimony or other sworn written submission may be relied on by the parties during oral argument, and the presiding officer shall consider those facts and data only if they are submitted in that form.

[50 FR 41670, Oct. 15, 1985, as amended at 69 FR 2267, Jan. 14, 2004]

**§2.1115 Designation of issues for adjudicatory hearing.**

(a) After due consideration of the oral presentation and the written facts and data submitted by the parties and relied on at the oral argument, the presiding officer shall promptly by written order:

(1) Designate any disputed issues of fact, together with any remaining issues of law, for resolution in an adjudicatory hearing; and

(2) Dispose of any issues of law or fact not designated for resolution in an adjudicatory hearing.

With regard to each issue designated for resolution in an adjudicatory hearing, the presiding officer shall identify the specific facts that are in genuine and substantial dispute, the reason why the decision of the Commission is likely to depend on the resolution of that dispute, and the reason why an adjudicatory hearing is likely to resolve the dispute. With regard to issues not designated for resolution in an adjudicatory hearing, the presiding officer shall include a brief statement of the reasons for the disposition. If the presiding officer finds that there are no disputed issues of fact or law requiring resolution in an adjudicatory hearing, the presiding officer shall also dismiss the proceeding.

(b) No issue of law or fact shall be designated for resolution in an adjudicatory hearing unless the presiding officer determines that:

(1) There is a genuine and substantial dispute of fact which can only be resolved with sufficient accuracy by the introduction of evidence in an adjudicatory hearing; and

(2) The decision of the Commission is likely to depend in whole or in part on the resolution of that dispute.

(c) In making a determination under paragraph (b) of this section, the presiding officer shall not consider:

(1) Any issue relating to the design, construction, or operation of any civilian nuclear power reactor already licensed to operate at the site, or any civilian nuclear power reactor for which a construction permit has been granted at the site, unless the presiding officer determines that any such issue substantially affects the design, construction, or operation of the facility or activity for which a license application, authorization, or amendment to expand the spent nuclear fuel storage capacity is being considered; or

(2) Any siting or design issue fully considered and decided by the Commission in connection with the issuance of a construction permit or operating license for a civilian nuclear power reactor at that site, unless (i) such issue results from any revision of siting or design criteria by the Commission following such decision; and (ii) the presiding officer determines that such issue substantially affects the design, construction, or operation of the facility or activity for which a license application, authorization, or amendment to expand the spent nuclear fuel storage capacity is being considered.

(d) The provisions of paragraph (c) of this section shall apply only with respect to licenses, authorizations, or amendments to licenses or authorizations applied for under the Atomic Energy Act of 1954, as amended, before December 31, 2005.

(e) Unless the presiding officer disposes of all issues and dismisses the proceeding, appeals from the presiding officer's order disposing of issues and designating one or more issues for resolution in an adjudicatory hearing are

## Nuclear Regulatory Commission

## § 2.1202

interlocutory and must await the end of the proceeding.

[50 FR 41671, Oct. 15, 1985; 50 FR 45398, Oct. 31, 1985]

### § 2.1117 Burden of proof.

The applicant bears the ultimate burden of proof (risk of non-persuasion) with respect to the contention in the proceeding. The proponent of the request for an adjudicatory hearing bears the burden of demonstrating under § 2.1115(b) that an adjudicatory hearing should be held.

[69 FR 2267, Jan. 14, 2004]

### § 2.1119 Applicability of other sections.

In proceedings subject to this part, the provisions of subparts A, C, and L of this part are also applicable, except where inconsistent with the provisions of this subpart.

[69 FR 2267, Jan. 14, 2004]

## Subpart L—Informal Hearing Procedures for NRC Adjudications

SOURCE: 69 FR 2267, Jan. 14, 2004, unless otherwise noted.

### § 2.1200 Scope of subpart L.

The provisions of this subpart, together with subpart C of this part, govern all adjudicatory proceedings conducted under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act, and 10 CFR part 2, except for proceedings on the licensing of the construction and operation of a uranium enrichment facility, proceedings on an initial application for construction authorization for a high-level radioactive waste geologic repository at a geologic repository operations area noticed under §§ 2.101(f)(8) or 2.105(a)(5), proceedings on an initial application for a license to receive and possess high-level radioactive waste at a geologic repository operations area, proceedings on enforcement matters unless all parties otherwise agree and request the application of Subpart L procedures, and proceedings for the direct or indirect transfer of control of an NRC license when the transfer requires prior approval of the NRC under the Commis-

sion's regulations, governing statutes, or pursuant to a license condition.

### § 2.1201 Definitions.

The definitions of terms contained in § 2.4 apply to this subpart unless a different definition is provided in this subpart.

### § 2.1202 Authority and role of NRC staff.

(a) During the pendency of any hearing under this subpart, consistent with the NRC staff's findings in its own review of the application or matter which is the subject of the hearing and as authorized by law, the NRC staff is expected to issue its approval or denial of the application promptly, or take other appropriate action on the underlying regulatory matter for which a hearing was provided. When the NRC staff takes its action, it shall notify the presiding officer and the parties to the proceeding of its action. That notice must include the NRC staff's position on the matters in controversy before the presiding officer with respect to the staff action. The NRC staff's action on the matter is effective upon issuance by the staff, except in matters involving:

(1) An application to construct and/or operate a production or utilization facility;

(2) An application for an amendment to a construction authorization for a high-level radioactive waste repository at a geologic repository operations area falling under either 10 CFR 60.32(c)(1) or 10 CFR part 63;

(3) An application for the construction and operation of an independent spent fuel storage installation (ISFSI) located at a site other than a reactor site or a monitored retrievable storage installation (MRS) under 10 CFR part 72; and

(4) Production or utilization facility licensing actions that involve significant hazards considerations as defined in 10 CFR 50.92.

(b)(1) The NRC staff is not required to be a party to a proceeding under this subpart, except where:

(i) The proceeding involves an application denied by the NRC staff or an enforcement action proposed by the NRC staff; or